

1 Law Offices of Jacob Amaru
2 530 S. Main Ave.
3 Tucson, AZ 85701
4 Phone: 520-465-6968
5 Fax: 866-651-6248
6 Bar No. 022333/ Pima County No. 65715
7 jake@defenselawtucson.com
8 Attorney for Defendant

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AMY J. HUNLEY
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DEPUTY

9
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF COCHISE
12

13 STATE OF ARIZONA,

14 Plaintiff

Case No: CR2019-00043, CR2019-00089,
CR2019-00090, CR2019-00091

15 v.

16 MOTION FOR CHANGE OF VENUE

17 DOUGLAS PACKER,

18 Defendant.

Hon. Laura Cardinal

Division I

19 COMES NOW the Defendant, DOUGLAS PACKER, by and through his undersigned
20 attorney, JACOB M. AMARU, and respectfully moves for this Court, pursuant to Rule 10.3 of
21 the Arizona Rules of Criminal Procedure, the Due Process Clause of the United States
22 Constitution, Amendments 5 and 14, Article 2 § 24 of the Arizona Constitution, for change of
23 venue of the trial due to pretrial publicity. This motion is supported by the following
24 Memorandum of Points and Authorities.
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27 >>>>>>>

Memorandum of Points and Authorities

FACTS

In this case, Defendant Douglas Packer has been charged in an eight-count indictment for acts alleged to have occurred on or before October 10th, 2014 to January of 2015. Specially, these counts included sexual assault, multiple counts of unlawful sexual conduct and indecent exposure. All of the victims in this case were adult females whom were in custody at the Cochise County Jail at the time the alleged acts took place.

The Defendant, up until the time of his arrest, was employed by the Cochise County Attorney's Office as a jail chaplain in the same jail where these alleged illegal acts were said to have occurred. The Cochise County Sheriff, Mr. Packer's previous employer, arrested the Defendant and is now investigating this case.

There has been extensive media coverage on this case. Some of this coverage includes multiple front-page stories in the local newspapers, television news coverage, and numerous Internet stories. A Google search of "Douglas Packer Chaplain" results in 19 different news stories on the first three pages of results. Below are a few such items that have been published in relation to this case:

January 5th, 2019- "Cochise County chaplain accused of sexual abuse in county jail." *Fox 10 News*.

www.fox10phoenix.com/news/arizona-news/cochise-county-chaplain-accused-of-sexual-abuse-in-county-jail

January 5th, 2019- "Cochise County Chaplain Arrested, Accused of Sex Crimes." *U.S. News*.

1 [https://www.usnews.com/news/best-states/arizona/articles/2019-01-05/cochise-county-jail-](https://www.usnews.com/news/best-states/arizona/articles/2019-01-05/cochise-county-jail-chaplain-arrested-accused-of-sex-crimes)
2 [chaplain-arrested-accused-of-sex-crimes](https://www.usnews.com/news/best-states/arizona/articles/2019-01-05/cochise-county-jail-chaplain-arrested-accused-of-sex-crimes)

3
4 January 5th, 2019- "CCSO chaplain arrested." *Douglas Dispatch*.

5 [https://www.douglasdispatch.com/news/ccso-chaplain-arrested/article_83c0e360-1121-11e9-](https://www.douglasdispatch.com/news/ccso-chaplain-arrested/article_83c0e360-1121-11e9-92d3-b7f5765fc057.html)
6 [92d3-b7f5765fc057.html](https://www.douglasdispatch.com/news/ccso-chaplain-arrested/article_83c0e360-1121-11e9-92d3-b7f5765fc057.html)

7
8 January 5th, 2019- "Cochise County chaplain arrested, accused of sex crimes." *KGUN 9*.

9
10 [https://www.kgun9.com/photo-galleries/crime/cochise-county-jail-chaplain-arrested-accused-of-](https://www.kgun9.com/photo-galleries/crime/cochise-county-jail-chaplain-arrested-accused-of-sex-crimes)
11 [sex-crimes](https://www.kgun9.com/photo-galleries/crime/cochise-county-jail-chaplain-arrested-accused-of-sex-crimes)

12
13 January 5th, 2019- "Cochise County Sheriff's chaplain arrested on suspicion of sexual abuse."
14 *Arizona Republic*.

15
16 [https://www.azcentral.com/story/news/local/arizona-breaking/2019/01/05/cochise-county-](https://www.azcentral.com/story/news/local/arizona-breaking/2019/01/05/cochise-county-sheriffs-chaplain-arrested-suspicion-sexual-abuse/2492740002/)
17 [sheriffs-chaplain-arrested-suspicion-sexual-abuse/2492740002/](https://www.azcentral.com/story/news/local/arizona-breaking/2019/01/05/cochise-county-sheriffs-chaplain-arrested-suspicion-sexual-abuse/2492740002/)

18
19 January 5th, 2019- "CCSO: Jail Chaplain facing sexual assault charges." *KOLD News 13*.

20 <https://www.kold.com/2019/01/05/ccso-jail-chaplain-facing-sexual-assault-charges/>

21
22 January 6th, 2019- "Cochise County Jail Chaplain Arrested for Sexual Assault." *Arizona*
23 *Independent News Network*.

24
25 [https://arizonadailyindependent.com/2019/01/06/cochise-county-jail-chaplain-arrested-for-](https://arizonadailyindependent.com/2019/01/06/cochise-county-jail-chaplain-arrested-for-sexual-assault/)
26 [sexual-assault/](https://arizonadailyindependent.com/2019/01/06/cochise-county-jail-chaplain-arrested-for-sexual-assault/)

27
28 January 7th, 2019- "Cochise County Sheriff's chaplain arrested for sexual assault at Bisbee jail."

29 *Azfamily.com*

1 [https://www.azfamily.com/news/cochise-county-sheriff-s-chaplain-arrested-for-sexual-assault-](https://www.azfamily.com/news/cochise-county-sheriff-s-chaplain-arrested-for-sexual-assault-at/article_468615ae-1277-11e9-b179-174cf23575fa.html)
2 [at/article_468615ae-1277-11e9-b179-174cf23575fa.html](https://www.azfamily.com/news/cochise-county-sheriff-s-chaplain-arrested-for-sexual-assault-at/article_468615ae-1277-11e9-b179-174cf23575fa.html)
3

4 January 11th, 2019- "Cochise County Chaplain re-arrested on new charges of sexual abuse,
5 assault." *Douglas Dispatch*.
6

7 [https://www.douglasdispatch.com/news/cochise-county-chaplain-re-arrested-on-new-charges-of-](https://www.douglasdispatch.com/news/cochise-county-chaplain-re-arrested-on-new-charges-of-sexual/article_907eb1f0-15c9-11e9-9590-e31b8acc0d79.html)
8 [sexual/article_907eb1f0-15c9-11e9-9590-e31b8acc0d79.html](https://www.douglasdispatch.com/news/cochise-county-chaplain-re-arrested-on-new-charges-of-sexual/article_907eb1f0-15c9-11e9-9590-e31b8acc0d79.html)
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10 January 11th, 2019- "Sierra Vista chaplain arrested for sexual assault, kidnapping." News 4
11 *Tucson KVOA*.
12

13 <https://kvoa.com/news/2019/01/11/sierra-vista-chaplain-arrested-for-sexual-assault-kidnapping/>
14

15 January 11th, 2019- "Jail Chaplain in Cochise County arrested for second time; faces assault
16 charges." *Azfamily.com*.
17

18 [https://www.azfamily.com/news/jail-chaplain-in-cochise-county-arrested-for-second-time-](https://www.azfamily.com/news/jail-chaplain-in-cochise-county-arrested-for-second-time-faces/article_18c5f99a-15dd-11e9-8734-0392b13435b4.html)
19 [faces/article_18c5f99a-15dd-11e9-8734-0392b13435b4.html](https://www.azfamily.com/news/jail-chaplain-in-cochise-county-arrested-for-second-time-faces/article_18c5f99a-15dd-11e9-8734-0392b13435b4.html)
20

21 January 11th, 2019 updated January 24th, 2019- "UPDATE: Cochise County chaplain facing even
22 more sex crime charges." *KOLD News 13*.
23

24 <https://www.kold.com/2019/01/11/another-arrest-new-charges-cochise-county-jail-chaplain/>
25

26 January 13th, 2019- "Cochise County Sheriff's Office chaplain arrested on additional sexual
27 abuse charges." *Gila Herald*.
28

29 [https://gilaherald.com/cochise-county-sheriffs-office-chaplain-arrested-on-additional-sexual-](https://gilaherald.com/cochise-county-sheriffs-office-chaplain-arrested-on-additional-sexual-abuse-charges/)
30 [abuse-charges/](https://gilaherald.com/cochise-county-sheriffs-office-chaplain-arrested-on-additional-sexual-abuse-charges/)

1 January 24th, 2019- "Bisbee chaplain charges with 28 crimes from 2014-2018." *12News.com*.

2
3 [https://www.12news.com/article/news/crime/bisbee-jail-chaplain-charged-with-28-crimes-from-](https://www.12news.com/article/news/crime/bisbee-jail-chaplain-charged-with-28-crimes-from-2014-2018/75-57fb81cb-8242-44a9-9197-61c6660c5697)
4 [2014-2018/75-57fb81cb-8242-44a9-9197-61c6660c5697](https://www.12news.com/article/news/crime/bisbee-jail-chaplain-charged-with-28-crimes-from-2014-2018/75-57fb81cb-8242-44a9-9197-61c6660c5697)

5
6 January 24th, 2019- "Former Cochise County jail chaplain faces 28 new charges." *KGUN9.com*

7 [https://www.kgun9.com/news/local-news/former-cochise-county-jail-chaplain-faces-28-new-](https://www.kgun9.com/news/local-news/former-cochise-county-jail-chaplain-faces-28-new-charges)
8 [charges](https://www.kgun9.com/news/local-news/former-cochise-county-jail-chaplain-faces-28-new-charges)

9
10 January 25th, 2019- "Cochise County files additional sex-crime charges against jail chaplain."

11 *Arizona Daily Star*.

12
13 [https://tucson.com/news/local/crime-and-courts/cochise-county-files-additional-sex-crime-](https://tucson.com/news/local/crime-and-courts/cochise-county-files-additional-sex-crime-charges-against-jail-chaplain/article_00ac99ac-15d6-11e9-956f-9b9025f5383c.html)
14 [charges-against-jail-chaplain/article_00ac99ac-15d6-11e9-956f-9b9025f5383c.html](https://tucson.com/news/local/crime-and-courts/cochise-county-files-additional-sex-crime-charges-against-jail-chaplain/article_00ac99ac-15d6-11e9-956f-9b9025f5383c.html)

15
16 March 7th, 2019- "Search begins for new defense attorney for ex-jail chaplain." *Herald/Review*
17 *Media*.

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19 [https://www.myheraldreview.com/news/cochise_county/search-begins-for-new-defense-](https://www.myheraldreview.com/news/cochise_county/search-begins-for-new-defense-attorney-for-ex-jail-chaplain/article_804c0196-414c-11e9-977f-5b66a90dbb72.html)
20 [attorney-for-ex-jail-chaplain/article_804c0196-414c-11e9-977f-5b66a90dbb72.html](https://www.myheraldreview.com/news/cochise_county/search-begins-for-new-defense-attorney-for-ex-jail-chaplain/article_804c0196-414c-11e9-977f-5b66a90dbb72.html)

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22 March 26th, 2019- "Jailed jail chaplain resigns his position." *Herald/Review Media*.

23 [https://www.myheraldreview.com/news/cochise_county/jailed-jail-chaplain-resigns-his-](https://www.myheraldreview.com/news/cochise_county/jailed-jail-chaplain-resigns-his-position/article_a6336440-5023-11e9-8750-a7db7eca9932.html)
24 [position/article_a6336440-5023-11e9-8750-a7db7eca9932.html](https://www.myheraldreview.com/news/cochise_county/jailed-jail-chaplain-resigns-his-position/article_a6336440-5023-11e9-8750-a7db7eca9932.html)

25
26 April 30th, 2019 updated May 6th, 2019- "Crying inmate led to investigation of sexual abuse by
27 jail chaplain; Decision to keep probe off-the-books for first few hours secured suspect wasn't
28 tipped off." *Herald Review*.

1 [https://www.myheraldreview.com/news/cochise_county/crying-inmate-led-to-investigation-of-](https://www.myheraldreview.com/news/cochise_county/crying-inmate-led-to-investigation-of-sexual-abuse-by-jail/article_065656f8-6bbc-11e9-a619-6f8df5231549.html)
2 [sexual-abuse-by-jail/article_065656f8-6bbc-11e9-a619-6f8df5231549.html](https://www.myheraldreview.com/news/cochise_county/crying-inmate-led-to-investigation-of-sexual-abuse-by-jail/article_065656f8-6bbc-11e9-a619-6f8df5231549.html)
3

4 May 4th, 2019- "CCSO report details rumors, red flags of jail chaplain's conduct since 2014;
5 Detectives interviewed a dozen current and former inmates about Packer's actions."
6

7 *Herald/Review Media.*

8 [https://www.myheraldreview.com/news/cochise_county/ccso-report-details-rumors-red-flags-of-](https://www.myheraldreview.com/news/cochise_county/ccso-report-details-rumors-red-flags-of-jail-chaplain-s/article_28eac088-6ec7-11e9-b32b-5be2c2e7f153.html)
9 [jail-chaplain-s/article_28eac088-6ec7-11e9-b32b-5be2c2e7f153.html](https://www.myheraldreview.com/news/cochise_county/ccso-report-details-rumors-red-flags-of-jail-chaplain-s/article_28eac088-6ec7-11e9-b32b-5be2c2e7f153.html)
10

11 May 8th, 2019- "Cochise County served \$2.3 million claim for jail chaplain's alleged sexual
12 misconduct; Sheriff confirms ongoing internal review separate of criminal investigation."
13

14 *Herald/Review.*

15 [https://www.myheraldreview.com/news/cochise_county/cochise-county-served-million-claim-](https://www.myheraldreview.com/news/cochise_county/cochise-county-served-million-claim-for-jail-chaplain-s-alleged/article_031df01e-7207-11e9-9757-531b6ec8d810.html)
16 [for-jail-chaplain-s-alleged/article_031df01e-7207-11e9-9757-531b6ec8d810.html](https://www.myheraldreview.com/news/cochise_county/cochise-county-served-million-claim-for-jail-chaplain-s-alleged/article_031df01e-7207-11e9-9757-531b6ec8d810.html)
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18 **LAW**
19

20 A fair trial is a fundamental liberty secured by both the United States Constitution and the
21 Arizona Constitution. *State v. Bible*, 175 Ariz. 549, 567, 858 P.2d 1152, 1170 (1993). Included in
22 the right to a fair trial, is the right to have a jury determine the guilt or innocence of an accused
23 solely on the evidence admitted at trial. *Id.* (citing *Irving v. Dowd*, 366 U.S. 717, 722, 81 S. Ct.
24 1639, 1642 (1961)). The failure to accord an accused individual a fair hearing by a panel of
25 impartial jurors violates "even the minimal standards of due process." *Irvin*, 366 U.S. at 722, 81,
26 S. Ct. at 1642.
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1 Pursuant to Rule 10.3 of the Arizona rules of Criminal Procedure, a defendant may seek a
2 change of venue if the pre-trial publicity has been so pervasive that the defendant will probably
3 be deprived of a fair trial. *State v. Cruz*, Ariz. 149 ¶ 12, 181 P.3d 196, 203 (2008). Courts have
4 adopted a two-step inquiry to determine the effect of pretrial publicity: (1) did the publicity
5 create a presumption of prejudice, and (2) has the defendant shown actual prejudice. *State v.*
6 *Jones*, 197 Ariz. 290, ¶ 44, 4 P.3d 345, 362 (2000); *State v. Murray*, 184 Ariz. 9, 26, 906 P.2d
7 542, 559 (1995).
8

9
10 If "a defendant can show pretrial publicity so outrageous that it promises to turn the trial
11 into a mockery of justice or a mere formality, prejudice will be presumed without examining the
12 publicity's actual influence on the jury." *State v. Bible*, 175 Ariz. 549, 563, 858 P.2d 1152, 1166
13 (1993). A court must first ask if the publicity pervaded the court proceedings to such an extent
14 that prejudice can be presumed. *State v. Miles*, 186 Ariz. 10, 15, 918 P.2d 1028, 1033 (1996). If
15 not, the defendant must show actual prejudice. *Id.*
16
17

18 Prejudice will be presumed if the publicity has been so unfair, so prejudicial, and so
19 pervasive that the court cannot give any credibility to the jurors' answers during *voir dire*. *Cruz*,
20 218 Ariz. at ¶ 15, 181 P.3d at 204 [quoting *State v. Bolton*, 182 Ariz. 290, 300, 896 P.2d 830,
21 840 (1995)]; see also *Irvin*, 366 U.S. at 727-728, 81 S. Ct. at 1645 (recognizing that when a
22 defendant's life is at stake, and because of pretrial publicity, over two-thirds of the jurors were
23 familiar with the material facts and had an opinion that the defendant was guilty, the jurors'
24 statements of impartiality during *voir dire* should be given little weight). The Arizona Supreme
25 Court has recognized that in cases where the media successfully "whip[s] up hysteria and passion
26 in the community," courts have found presumption of prejudice to exist. *Bible*, 175 Ariz. at 565,
27 858 P.2d at 1168.
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1 ARGUMENT

2 a. Pretrial publicity has been so pervasive that prejudice can be presumed.

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4 Due to the extensive and pervasive pretrial publicity in this case, it should be presumed
5 that the local jury pool has been prejudiced and that the venue must be changed in order for
6 the Defendant to receive a fair trial. Not only has the Cochise County jury pool been
7 bombarded with numerous prejudicial news stories about Mr. Packard on their TVs, in their
8 local newspapers, and via the Internet, the Cochise County Sheriff's department itself, as the
9 investigator in this case, has used the media platform to paint the Defendant in a most
10 negative light. In a recent news story in the *Gila Herald* published on May 11th, 2019, Mark
11 J. Dannels, the Sheriff of the Cochise County Sheriff's Department, publicly stated that Mr.
12 Packer had "...violated his sacred oath of office and took advantage of those who truly
13 depended on them in their time of need." In the same story, the Sheriff also commented that
14 his employees, referring to Mr. Packard, are "always held a higher moral standard" because
15 they took an oath to protect and serve. Such persuasive speech by such a well-known, trusted,
16 local public official will most certainly sway a local jury to believe that 1) Mr. did Packard
17 did indeed take advantage of vulnerable incarcerated women; 2) that he is guilty of the
18 crimes for which he is accused; and 3) that he needs to held to a higher moral standard than a
19 non-Cochise County Sheriff employee. Also, by the Sheriff's words, it is evident that he has
20 been emotionally compromised and unable to conduct an unbiased investigation of Mr.
21 Packard's alleged illegal acts.

22
23 Furthermore, the media has whipped hysteria and passion in the Cochise County
24 community by its use of defamatory publicity. In addition to using descriptions like "sexual
25 abuse," "sexual assault," "sexual misconduct," "indecent exposure," "kidnapping," "forced to
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1 watch another inmate perform oral sex on him" to describe his alleged behavior while
2 working as jail chaplain, they also mention forensic evidence being taken from his home,
3 multiple arrests, multiple victims, multiple interviews of inmates, and additional looming sex
4 charges. If a jury is informed that Mr. Packard was charged with only 8 charges in his
5 indictment but heard in a media story that there were some thirty additional charges looming
6 elsewhere, it will likely affect its ability to remain impartial. Again, in such a small
7 community with so much negative press, and a trusted Sheriff publicly speaking out against
8 him in the news, it will be nearly impossible for Mr. Packard to get a panel of impartial
9 jurors.
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13 In conclusion, the pretrial publicity in this case has become so pervasive, it is
14 probable that Mr. Packard will be deprived of a fair trial. And to proceed with the trial in its
15 current venue promises to turn the trial into a mockery of justice or a mere formality.
16 Therefore, based upon the presumption of extensive and pervasive pretrial publicity, this
17 Court should grant the Defendant's motion for a change of venue.
18
19

20 CONCLUSION

21 **WHEREFORE**, the Defendant, Douglas Packer, for all of the reasons mentioned in this
22 motion, humbly requests this Court grant his request for change of venue.
23

24 RESPECTFULLY SUBMITTED on this 28th day of May,
25 2019.

26 LAW OFFICE OF JACOB AMARU

27
28
29 By 
30

JACOB M. AMARU
Attorney for Douglas Packer

COPIES of the foregoing mailed/delivered to:

Hon. Laura Cardinal, Division One.
Cochise County Superior Court
100 Quality Hill Road
Bisbee, AZ 85603

Lori Zucco
Deputy County Attorney
Cochise County Attorney's Office
150 Quality Hill Road